

Detailed Action

This office action is a response to applicant's communication submitted August 27, 2009 wherein a declaration is entered under 37 CFR 1.132. This application claims priority to foreign application DE10253042.4, filed November 14, 2002.

Claims 1, 9, and 19-21 are pending in this application.

Claims 1, 9, and 19-23 as amended are examined on the merits herein.

Reasons for Allowance

The declaration of Marlies Regiert under 37 CFR 1.132, submitted August 27, 2009, has been fully considered and entered into the record. The declaration, and Applicant's enclosed arguments, are persuasive to overcome the rejection of instant claims 1, 9, and 19-21 under 35 USC 103(a) for being obvious over Wagu et al. in view of Koulbanis et al., of record in the previous office action for reasons discussed below. Therefore the rejection is withdrawn.

Currently claims 1, 9, and 19-21 are pending in this application and have been examined on the merits herein. Applicant's amendment submitted August 27, 2009, is seen to be persuasive to remove all rejections of record in the previous office action and place the application in condition for allowance. Reasons for allowance are as follows:

The claimed invention is seen to be adequately described and enabled by the specification as originally filed. For example, p. 8 of the specification discloses a preparation comprising a complex of vitamin F and a cyclodextrin, which can be alpha

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cyclodextrin. Pp. 9-10 disclose various ratios of cyclodextrin and vitamin F including 3:1 and 4:1 alpha cyclodextrin:fatty acid. According to p. 1 of the specification, vitamin F consists of essential fatty acids, particularly omega-6-polyunsaturated fatty acids. Furthermore the examples on pp. 15-28 disclose various compositions comprising encapsulated linoleic acid. Example 6 on pp. 18-27 discloses a method of making various cosmetic compositions comprising dispersing the complexes into water then mixing this dispersion into a lipophilic emulsion. Furthermore, these examples would enable one skilled in the art to make and use the claimed invention. Therefore the claims meet the requirements of 35 USC 112.

In additions the claimed invention is novel and non-obvious over the prior art. No prior art reference discloses encapsulation of omega-6 polyunsaturated fatty acids by alpha-cyclodextrin in the claimed ratio. Although Wagu et al. discloses complexation of 4:1 alpha cyclodextrin to ethyl docosahexaenoate at a 4:1 ratio which are stable to oxidation in air, docosahexaenoic acid is an omega-3 fatty acid. Furthermore, although Koulbanis et al. (reference of record in previous action) discloses that there is a need to stabilize omega-6 fatty acids such as arachidonic and linoleic acids against air oxidation, one of ordinary skill in the art would not know what the optimal ratio of these fatty acids is and would have to perform routine optimization to determine the optimal composition. In view of the declaration submitted under 37 CFR 1.132 on August 7, 2009 and the stability data disclosed in figure 1 of the specification as originally filed, complexes having between 3:1 and 4:1 molecules of alpha cyclodextrin per molecule of linoleic acid are seen to have improved stability relative to either complexes having

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more than 4 or less than 3 molecules of alpha cyclodextrin. Similarly, Reichenbach et al. and Schlenk et al. (References included with PTO-892) disclose compositions of alpha-cyclodextrin with linoleic acid but these compositions do not have the specific claimed ratio of between 3: 1 and 4:1 for which unexpected results are observed. Therefore the optimal stability found in this range for the particular combination of an omega-6 fatty acid and alpha cyclodextrin is unexpected, overcoming any *prima facie* case of obviousness. Thus the claims meet the requirements of 35 USC 102 and 103.

Accordingly, Applicant's declaration and arguments submitted August 27, 2009, is sufficient to remove all rejections made in the prior office action as discussed above and to place the application in condition for allowance.

Any comments considered necessary by Applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled, "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric S. Olson whose telephone number is 571-272-9051. The examiner can normally be reached on Monday-Friday, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shaojia Anna Jiang can be reached on (571)272-0627. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Eric S Olson/
Examiner, Art Unit 1623
10/19/2009

/Shaojia Anna Jiang/
Supervisory Patent Examiner, Art Unit 1623